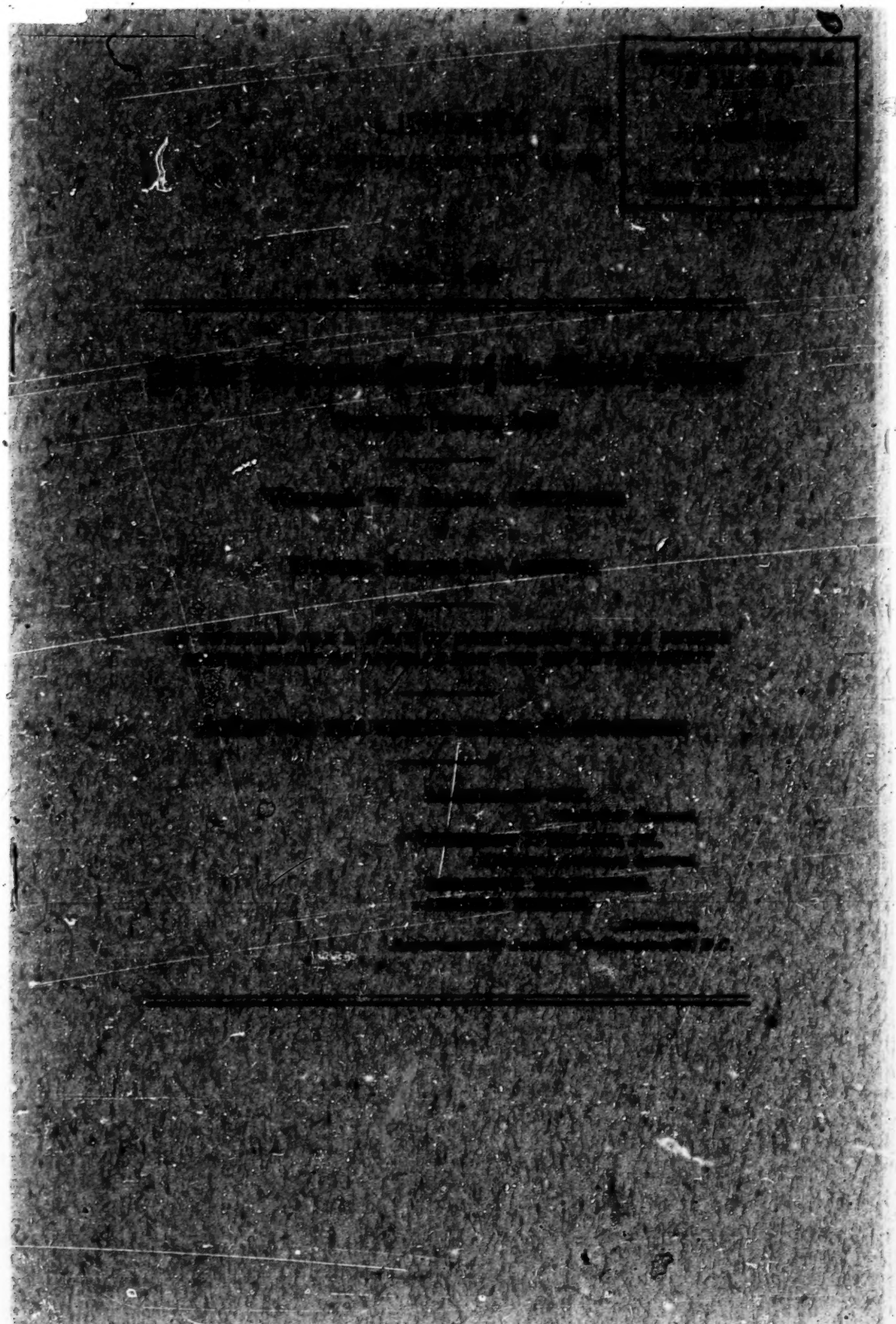

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statute involved	2
Statement	2
Argument	5
Conclusion	9

CITATIONS

Cases:	
Cuba R.R. Co. v. Crosby, 222 U.S. 473	6
Schaffer v. *United States*, 362 U.S. 511	6
United States v. *Greco*, 298 F. 2d 247, certiorari denied, 369 U.S. 820	6
Statute:	
18 U.S.C. 2315	2, 5
Miscellaneous:	
Federal Rules of Criminal Procedure, Rule 8(a)	6

690-781—63

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 144

WILLIAM W. RABIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 13–20) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 1963. The petition for a writ of certiorari was filed on May 20, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether proof that a Canadian bank vault containing bonds had been forcibly entered and the bonds taken was sufficient to shew that the bonds were "stolen" within the meaning of 18 U.S.C. 2315.

2. Whether petitioner was denied a fair trial by the joinder of a conspiracy count with the substantive counts.

STATUTE INVOLVED

Section 2315 of Title 18 U.S.C. provides in pertinent part:

> Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or mechandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken;
>
> * * * * *
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on four counts charging him alone with pledging stolen bonds, knowing them to have been stolen, in violation of 18 U.S.C. 2315. The indictment on which petitioner was tried contained five additional counts charging him and several others with concealing stolen securities, mail fraud, wire fraud, and conspiracy to commit such offenses. All the defendants were acquitted or obtained dismissals as to these counts. Petitioner was sentenced to ten years' imprisonment and fined $10,000 on each count, the

sentences to run concurrently and the fines to be cumulative. The conviction was affirmed by the court of appeals.

The government's evidence showed that on May 4, 1958, someone forcibly entered a bank located in Brockville, Ontario (A. 13–14).[1] A large hole had been made in the bank's vault and the entire area contained charred wood and paper, rubble, and smoke (A. 14–15). Numerous tools were found in the vicinity—including a sledge hammer, punch, electric drills, chisels, picks, crowbars, and acetylene cutting equipment. Various Canadian bonds, previously in the vault, totaling over several million dollars in face value, were missing (A. 27, 36–37; Ex. 3).

More than a million dollars worth of the missing bonds were found in Montreal the day after the robbery (A. 20) and an attempt to pledge six others was made in Montreal in July 1958 (A. 99, 105–106). During late May or early June 1958 in Montreal, one Cotroni offered $3,000,000 worth of the bonds for sale at 21 cents on the dollar to government witness Smith (A. 282). Before Smith had spoken with Cotroni he had seen Cotroni in the company of Sam Mannarino (A. 261, 264, 312). In early September 1958, Mannarino had a room on the same floor of a Montreal hotel as petitioner and checked out at the same time on September 11 (Ex. 22A; A. 348). Petitioner was also shown to have been in Montreal on Septem-

[1] "A." and "G.A." refer, respectively to petitioner's separate 353-page appendix in the court of appeals and a fifteen-page appendix appearing in appellee's brief in that court, both of which have been filed with this Court along with the exhibits.

ber 19 and 25 (Exs. 20–B and–C; A. 351). Petitioner pledged a total of $129,000 of the missing bonds as collateral for four loans at a Chicago bank between September 16 and October 2, 1958.

In the original conversation between Cotroni and Smith, Cotroni said that the bonds in question were "supposed to go to Europe" (A. 324). After he made the four pledges of bonds in Chicago, petitioner traveled to Europe. Before leaving, petitioner talked about obtaining credit from a travel agency, stating that he had had "enough bonds to take care of any obligations" (A. 193). In Europe petitioner and Rosden, his attorney, attempted to pledge some Canadian bonds (G.A. 3, 6–7). When one of the European banks wanted to communicate with Canada to verify the "titles" of the bonds being offered by petitioner and Rosden, the latter, in petitioner's presence, refused to agree to that procedure saying that he had to talk the matter over with petitioner (G.A. 4). Ultimately the bonds in question were withdrawn. Another European banker testified that on October 17, 1958, when he discussed investments with petitioner, "Mr. Rabin very enthusiastically spoke about his lust for money, and power, and he once—he said, 'Once I had a pile of one million bank notes on the table and then I swept it away'" (G.A. 12).

While in Europe in October, petitioner did succeed in pledging $140,500 of the stolen bonds with a Swiss bank in return for $47,000 in United States dollars and some $29,000 worth of Swiss francs (Exs. 71, 105). When this bank found that its security was in jeopardy, it pressed petitioner for payment and there was

an arrangement for repayment without publicity. Between January 20 and 22, 1959, petitioner and Mannarino were again in Montreal at the same hotel (Exs. 23–B, 22–E). On January 24, petitioner sent a $10,000 money order in partial payment of the Swiss account (Exs. 56, 71). On January 29, petitioner appeared at the Chicago bank and redeemed $9,000 in the pledged bonds. Petitioner asked which bonds were next due to mature, and when told that they had almost been sold, he said, "Oh, no. Well, I want to give you some money" (A. 174).

Petitioner on different occasions explained his acquisition of the bonds in varying ways. On October 2, at the time of the last pledge in issue, he told an official of the Chicago bank that "he got them from his mother's estate" (A. 170). Shortly thereafter, he and Rosden told European bankers that petitioner had obtained the Canadian bonds through wartime profits (G.A. 6, 10–11). Rosden testified that petitioner told him that the bonds represented payment for services rendered in connection with shipping arms to Castro supporters in Cuba (A. 327–329).

ARGUMENT

1. Section 2315 of Title 18 makes illegal the pledge for a loan of securities worth $500 or more moving in interstate or foreign commerce, "knowing the same to have been stolen, unlawfully converted, or taken * * *." Since the bank vault was forcibly entered and the bonds were then discovered missing, there was ample justification for the conclusion that, in the language of the indictment, the bonds had been

"stolen and unlawfully taken." That is all that had to be proved since neither the statute nor the indictment require any fine technical distinctions among various crimes of unlawful acquisition. It hardly needed an expert on Canadian law to show that forcible entry and removal of property is theft—an act which has been a crime throughout history. *United States* v. *Greco*, 298 F. 2d 247, 250–251 (C.A. 2), certiorari denied, 369 U.S. 820. Thus, in *Cuba R.R. Co.* v. *Crosby*, 222 U.S. 473, 478, this Court assumed that the "rudimentary" tort of conversion would incur liability "in all civilized countries."

2. Petitioner argues (Pet. 9–12) that he was denied a fair trial by the joinder of the conspiracy count with the substantive counts. He reasons that the unfairness was aggravated in this case because the competent evidence of guilt was "practically non-existent" and the government introduced irrelevant testimony.

Rule 8(a) of the Federal Rules of Criminal Procedure provides that two offenses may be charged in the same indictment if the offenses charged "are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." This Court has held that the joinder of conspiracy and substantive counts pursuant to this rule does not deprive defendants of a fair trial, unless the defendant demonstrates that actual prejudice resulted. *Schaffer* v. *United States*, 362 U.S. 511.

Here, the conspiracy and substantive counts involved acts of the same character arising out of the

same series of transactions. Petitioner's only arguments that the joinder prejudiced him concern the sufficiency of the evidence and the admission of allegedly irrelevant testimony. However, if petitioner were correct in these arguments, his conviction should be reversed on these grounds alone—they do not establish that the joinder was improper. Moreover, both claims are plainly erroneous.

The Statement, *supra*, demonstrates that petitioner's conviction is amply supported by the evidence. Since, as we have shown above, the government proved that the bonds were unlawfully taken and there is no dispute that the bonds were pledged by petitioner and moved in foreign commerce from Canada to the United States, the sole issue is whether there was proof of petitioner's guilty knowledge. The large amount of bonds possessed by petitioner, his inconsistent accounts of how he acquired them, his presence in Montreal where the stolen bonds had been brought, his reluctance to permit bonds to be checked by the European banks with which he attempted to do business, his dismay in learning that some of the pledged bonds had almost been sold, all support the conclusion of the jury that petitioner participated in efforts to dispose of the bonds and thus knew that the pledged bonds had been stolen.

The specific evidence which petitioner cites as prejudicial was relevant not only to the indictment as a whole but also to the four counts on which he was convicted, since it concerned the elements of knowledge and intent. The testimony of witnesses Lagroix and Smith dealt with the attempted sale

and pledging of bonds by two individuals in Montreal. This evidence was relevant as tending to show that the center of operations with respect to the stolen bonds was Montreal where petitioner was shown to have been shortly before each of the pledges for which he was convicted. Similarly admissible was the evidence of travel agents Hoyt and Voight as to conversations with petitioner and with another person in petitioner's presence. Contrary to petitioner's suggestion (Pet. 10), this testimony was admitted solely against petitioner (A. 189–190, 194, 198, 228, 230, 233) and not on any conspiracy theory. The travel agents testified, *inter alia*, that petitioner told them that he was carrying large amounts of bonds on his trip to Europe (A. 193; see A. 232), that he was obtaining capital in Montreal (A. 196–197), and that he clipped bond interest coupons all one morning (A. 200–201). This evidence tended to show that petitioner was part of the efforts to dispose of the bonds and knew that they had been stolen. While petitioner contends that he was prejudiced by the fact that the witness Tomlinson[2] claimed the privilege against self-discrimination, it is sufficient to say that, at the prosecutor's suggestion, the privilege was invoked outside the presence of the jury (A. 246–253).[3]

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[2] Tomlinson was shown to have made travel arrangements for petitioner (A. 190–199) and that later, in December, he was at a motel at the same time as Cotroni (Ex. 75; A. 351).

[3] At one point the court said "bring the jury back" (A. 250), but subsequent statements of both the judge and defense counsel show clearly that the jury never returned until Tomlinson had left the stand (A. 253–254).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
JEROME NELSON,
Attorneys.

JUNE 1963.

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